

## COPYRIGHT AND FAIR USE

□ Four factors determine Fair Use:

1. Purpose of use: OK if purpose is instructional, not for profit.
2. Nature of the work: OK if work was created for research or scholarly use and not for commercial gain.
3. Amount and substantiality of use: OK if it doesn't equal the basis of the work itself, i.e., this factor is based on the length, duration and qualitative measure of the material used in relationship to the whole—even if it's brief, if it's the basis of the whole work, it's not fair use.
4. Market effect: OK if use will result in little or no effect on the author's ability to make money from the work.

□ 3 “Tests” to help define educational Fair Use:

1. Brevity: Specific amounts or relative portions of a work can be used for educational purposes without seeking permission.
2. Spontaneity: A decision to use comes too late to seek permission. For Web-based materials, this is a shaky proposition since if materials remain online, they are not considered “spontaneous” and permission is required.
3. Cumulative effect: The number of times a work can be used without permission is based on how much effect repeated use would have on its profit-making ability for the author.

□ Simplified Fair Use Guidelines

Type of Materials	Amount	<ul style="list-style-type: none"> <li>· You may not copy more than 1 complete work or 2 excerpts from the same author.</li> <li>· You may not copy more than 3x from the same work or volume, except for newspapers or other current news publications, for which there is no limit.</li> <li>· You may not copy the same item from term to term.</li> <li>· You may not copy “consumables” such as workbooks or study guides</li> <li>· Each copy you make must include a copy right notice.</li> </ul>
Excerpted prose	1,000 words or 10%	
Complete prose	2,500 words	
Poetry	Complete poem if less than 250 words and if printed not more than 2 pages  250-word excerpt from a longer poem	
Illustration	1 per book or periodical issue	
Music	Excerpts of no more than 10% of a complete work, provided that they do not constitute a “performable” unit	

Taken from multiple copying guidelines found in the Agreement on Guidelines for Classroom Copying and the Guidelines for Educational Use of Music. (Horton, p. 97)

□ Simplified Fair Use Guidelines for Educational Multimedia

Type of Materials	Amount	
Text	10% or 1,000 words	<ul style="list-style-type: none"><li>• You must include credit and copyright information on all copies</li><li>• Your project must include notice that the materials are included under the fair use exemption and are restricted from further use.</li><li>• With restricted access, the materials may remain available for 2 years. On an unsecure network, you can use the materials for only 15 days.</li></ul>
Images	No more than 5 works from any one artist	
Music	10% or 30 seconds	
Motion Media	10% or 3 minutes	
Database Tables	10% of 2,500 fields or cell entries	

Taken from Fair Use Guidelines for Educational Multimedia (Horton, p. 97)

**Resource:**

Web Teaching Guide: A Practical Approach to Creating Course Web Sites. (2000) Horton, Yale University Press, New Haven & London.

**Adapted from:**

Langan, Terri. "Copyright and Intellectual Property Information." <[http://online.foxvalleytech.com/courses/1/IOS/content/ 3793 1/fairuse.pdf](http://online.foxvalleytech.com/courses/1/IOS/content/3793_1/fairuse.pdf)>